

Senate Engrossed

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 204

SENATE BILL 1348

AN ACT

AMENDING SECTIONS 32-572, 32-2371, 32-3002, 32-3003, 32-3021, 32-3023, 32-3051, 32-3052, 32-3071, 32-3072 AND 32-3076, ARIZONA REVISED STATUTES; RELATING TO PRIVATE POSTSECONDARY EDUCATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-572, Arizona Revised Statutes, is amended to read:

32-572. Grounds for disciplinary action or refusal to issue or renew license; definition

A. The board may take disciplinary action or refuse to issue or renew a license for any of the following causes:

1. Continued performance of cosmetology, aesthetics or nail technology services by a person knowingly having an infectious or communicable disease.

2. Conviction of a crime.

3. Commission of an act involving dishonesty, fraud or deceit with the intent to substantially benefit oneself or another or substantially injure another.

4. Malpractice or incompetency.

5. Knowingly advertising by means of false, misleading, deceptive or fraudulent statements through communication media.

6. Violating any provision of this chapter or any rule adopted pursuant to this chapter.

7. Making oral or written false statements to the board.

8. Repeated failure to correct infractions of safety and sanitary requirements prescribed by the board in its rules.

9. Failing to comply with an order of the board.

B. A conviction of a crime or act shall not be a cause of refusal to issue or renew a license unless the crime or act is substantially related to the qualifications, functions or duties of the license for which application is made.

~~C. The board of cosmetology shall suspend the license of a cosmetology school on notification by the state board for private postsecondary education that the school has failed to pay an assessment to the student tuition recovery fund pursuant to section 32-3072. The suspension remains in effect until the cosmetology school has paid the assessment in full.~~

~~D.~~ C. The expiration, cancellation, suspension or revocation of a license or a licensee's voluntary surrender of a license does not deprive the board of jurisdiction to do any of the following:

1. Proceed with an investigation of a licensee.

2. Proceed with an action or disciplinary proceeding against a licensee.

3. Suspend or revoke a license.

4. Deny the renewal or right of renewal of a license.

~~E.~~ D. For the purposes of this section, "conviction" means a plea or verdict of guilty or a conviction following a plea of no contest.

Sec. 2. Section 32-2371, Arizona Revised Statutes, is amended to read:

32-2371. License for schools; requirements

A. No professional driver training school shall be established nor shall any such existing school be continued on or after March 13, 1968 unless

1 such school applies for and obtains from the director a license in the manner
2 and form prescribed by the director.

3 B. Rules adopted by the director shall state the requirements for a
4 school license, including requirements concerning location, equipment,
5 courses of instruction, instructors, previous records of the school and
6 instructors, schedule of fees and charges, character and reputation of the
7 operators and instructors, insurance in such sum and with such provisions as
8 the director deems necessary to protect adequately the interests of the
9 public, and such other matters as the director may prescribe for the
10 protection of the public.

11 ~~C. The director of the department of transportation shall suspend the~~
12 ~~license of a professional driver training school that has elected to~~
13 ~~participate in the student tuition recovery fund on notification by the state~~
14 ~~board for private postsecondary education that the school has failed to pay~~
15 ~~an assessment to the fund pursuant to section 32-3072. The suspension~~
16 ~~remains in effect until the professional driver training school has paid the~~
17 ~~assessment in full.~~

18 Sec. 3. Section 32-3002, Arizona Revised Statutes, is amended to read:

19 32-3002. State board for private postsecondary education;
20 committees

21 A. A state board for private postsecondary education is established
22 consisting of the following seven members appointed by the governor pursuant
23 to section 38-211:

24 1. Two members who hold executive or managerial positions in a private
25 educational institution offering private vocational programs in this state.

26 2. One member who holds an executive or managerial position in a
27 private educational institution offering an associate degree.

28 3. Two members who hold executive or managerial positions in a private
29 educational institution offering a baccalaureate or higher degree, or both.

30 4. Two members who are citizens of this state and have been occupied
31 in commerce or industry in this state for at least three years.

32 B. BOARD MEMBERS SERVE AT THE PLEASURE OF THE GOVERNOR. Terms of
33 office of board members are four years to begin and end on the third Monday
34 in January UNLESS REMOVED BY THE GOVERNOR. ~~Board members serve at the~~
35 ~~pleasure of the governor.~~ THE GOVERNOR SHALL APPOINT A MEMBER FOR THE
36 UNEXPIRED PORTION OF A TERM TO FILL A VACANCY OCCURRING DURING A TERM OF
37 OFFICE.

38 C. Four board members constitute a quorum for the transaction of
39 business. The vote of a majority of the board members transacting business
40 constitutes authority for the board to act.

41 D. Members of the board are eligible to receive compensation as
42 determined pursuant to section 38-611 or at fifty dollars, whichever is more,
43 for each day actually spent in the performance of their duties and
44 reimbursement for all expenses necessary and properly incurred in attending
45 meetings or hearings of the board.

1 E. Members, employees, COMMITTEE MEMBERS and agents of the board and
2 members of citizen advisory committees are immune from personal liability
3 with respect to acts done and actions taken in good faith without wanton
4 disregard of their statutory duties pursuant to this chapter.

5 F. THE CHAIRMAN MAY ESTABLISH COMMITTEES FROM THE BOARD MEMBERSHIP
6 NECESSARY TO CARRY OUT THE FUNCTIONS OF THE BOARD.

7 Sec. 4. Section 32-3003, Arizona Revised Statutes, is amended to read:
8 32-3003. Powers and duties

9 A. The board shall:

10 1. Annually select a chairman from among its members.

11 2. Meet at least four times a year.

12 3. Adopt rules which are necessary or proper for the administration of
13 this chapter.

14 4. Administer and enforce this chapter and rules adopted pursuant to
15 this chapter.

16 5. Establish minimum standards for private vocational program
17 licensure requirements.

18 6. Adopt an official seal for attestation of licenses or other
19 official papers and documents.

20 7. Consider and pass upon applications for private vocational program
21 licenses and licenses to grant degrees.

22 8. Hear and pass upon complaints or charges.

23 9. Compel attendance of witnesses, administer oaths and take testimony
24 concerning all matters coming within its jurisdiction.

25 10. Keep a record of its proceedings.

26 11. Keep a register which shows the date of each application for a
27 private vocational program license, qualifications and place of business of
28 the applicant and disposition of the application.

29 12. Keep a register which shows the date of each application for a
30 license to grant degrees, qualifications and place of business of the
31 applicant and disposition of the application.

32 13. Maintain a list of institutions licensed pursuant to this chapter
33 which is open to public inspection at all reasonable times. The board shall
34 give a copy of the list to any person who requests it.

35 14. ENGAGE IN A FULL EXCHANGE OF INFORMATION WITH OTHER REGULATORY
36 BOARDS, GOVERNMENTAL AGENCIES, ACCREDITING AGENCIES AND THE UNITED STATES
37 DEPARTMENT OF EDUCATION.

38 ~~14.~~ 15. Do other things necessary to carry out the purposes of this
39 chapter.

40 B. The board may:

41 1. Employ temporary or permanent personnel it deems necessary to carry
42 out the purposes of this chapter and designate their duties. These duties
43 may include considering and passing on license applications, considering and
44 passing on complaints or charges, making investigations, compelling
45 attendance of witnesses and issuing official papers and documents.

2. Make investigations, hold hearings and make decisions to enforce the provisions of this chapter.

3. Issue subpoenas to compel the attendance of witnesses and the production of documents and administer oaths, take testimony, hear proof and receive exhibits in evidence.

4. Accept and spend federal monies and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of a fiscal year.

Sec. 5. Section 32-3021, Arizona Revised Statutes, is amended to read:

32-3021. Private vocational program license; qualifications; provision of information; exemptions

A. A person shall not operate a private vocational program unless the person holds a private vocational program license issued pursuant to this chapter. Each program offered by a private vocational program licensee shall be authorized on a private vocational program license. The board shall prescribe the manner in which the programs shall be identified on the license.

B. An applicant for a private vocational program license shall meet all of the following requirements:

1. Furnish a LETTER OF CREDIT, surety bond or cash deposit as provided in section 32-3023.

2. Make specific information concerning educational programs, including statements of purpose, objectives, course of study, policies, fees and other pertinent information, available to prospective students and the general public.

3. Be financially responsible and have management capability.

4. Maintain a qualified faculty.

5. Maintain facilities, equipment and materials which are appropriate for the stated program. All facilities shall meet applicable state and local health and safety laws.

6. Maintain appropriate records as the board prescribes which are properly safeguarded and preserved.

7. Use only advertisements which are consistent with the information made available as provided in paragraph 2 of this subsection.

8. Provide courses of instruction which meet stated objectives.

9. Provide a grievance procedure for students.

10. COMPLY WITH ALL FEDERAL AND STATE LAWS RELATING TO THE OPERATION OF A PRIVATE POSTSECONDARY EDUCATIONAL INSTITUTION.

~~10.~~ 11. Other requirements the board deems necessary.

C. An applicant for a private vocational program license shall submit evidence of meeting the requirements prescribed in subsection B of this section to the board. The board shall verify the evidence submitted. Verification shall include on-site verification.

1 ~~D. The board may exempt an accredited private vocational program from~~
2 ~~subsections B and C of this section if the applicant for a private vocational~~
3 ~~program license submits evidence of accreditation to the board. The board~~
4 ~~shall prescribe appropriate evidence of accreditation.~~

5 D. THE FILING OF AN APPLICATION GRANTS THE BOARD THE AUTHORITY TO
6 OBTAIN INFORMATION FROM ANY OF THE FOLLOWING:

7 1. A LICENSING BOARD OR AGENCY IN ANY STATE, DISTRICT, TERRITORY OR
8 COUNTY OF THE UNITED STATES OR ANY FOREIGN COUNTRY.

9 2. THE ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM AS DEFINED IN
10 SECTION 41-1750.

11 3. THE FEDERAL BUREAU OF INVESTIGATION.

12 E. The board may, on application, MAY issue a private vocational
13 program license to a new educational institution as provided in this section,
14 except that the board shall establish separate minimum standards for
15 licensure requirements of new educational institutions. These minimum
16 standards may include the modification of licensure requirements as provided
17 in subsection B, paragraphs 3, 5, 6, 7 and 8 of this section to meet the
18 circumstances of new educational institutions. The board shall monitor the
19 new educational institution to ensure compliance with the licensure
20 requirements. The board shall issue a private vocational program license as
21 provided in this subsection one time only to new educational institutions.

22 F. This section does not apply to any of the following:

23 ~~1. Schools, trade associations or courses which are otherwise~~
24 ~~regulated pursuant to any other law of this state or federal law.~~

25 ~~2. Job training or rehabilitation programs operated for state, local~~
26 ~~or federal governmental agencies.~~

27 1. A SCHOOL LICENSED PURSUANT TO CHAPTER 3 OR 5 OF THIS TITLE.

28 2. AN INSTRUCTIONAL PROGRAM OR COURSE SPONSORED BY A BONA FIDE TRADE
29 ASSOCIATION SOLELY FOR ITS MEMBERS.

30 3. Privately owned academic schools engaged in the process of general
31 education which is designed to produce a level of development equivalent to
32 that necessary to meet the requirements for entrance into a public community
33 college or public university in this state and which may incidentally offer
34 technical and vocational courses as part of the curriculum.

35 4. Schools or private instruction conducted by any person engaged in
36 training, tutoring or teaching individuals or groups, if the instruction is
37 related to hobbies, avocations, academic improvement or recreation and may
38 only incidentally lead to gainful employment and if the instruction is for a
39 period of under forty hours and costs less than one thousand dollars.

40 5. Schools conducted by any person solely for training his THE
41 PERSON'S own employees.

42 6. AN INSTRUCTIONAL PROGRAM OR COURSE OFFERED SOLELY FOR EMPLOYEES AND
43 FOR THE PURPOSE OF IMPROVING THE EMPLOYEES IN THEIR EMPLOYMENT IF BOTH OF THE
44 FOLLOWING APPLY:

1 (a) THE EMPLOYEE IS NOT CHARGED A FEE.

2 (b) THE EMPLOYER PROVIDES OR FUNDS THE PROGRAM OR COURSE PURSUANT TO A
3 VALID WRITTEN CONTRACT BETWEEN THE EMPLOYER AND A PROGRAM OR COURSE PROVIDER.

4 7. TRAINING CONDUCTED PURSUANT TO 14 CODE OF FEDERAL REGULATIONS
5 PART 141.

6 Sec. 6. Section 32-3023, Arizona Revised Statutes, is amended to read:
7 32-3023. Letters of credit, bonds or cash deposits; fund

8 A. Before granting a private vocational program license or license to
9 grant degrees the board shall require of the applicant A LETTER OF CREDIT, a
10 surety bond in a form acceptable to the board or a cash deposit pursuant to
11 this section if the program or institution is not accredited. Before
12 renewing a private vocational program license or license to grant degrees the
13 board may require of the applicant A LETTER OF CREDIT, a surety bond in a
14 form acceptable to the board or a cash deposit pursuant to this section if
15 the program or institution is not accredited.

16 B. Before granting or renewing a private vocational program license or
17 license to grant degrees the board may require of the applicant A LETTER OF
18 CREDIT, a surety bond in a form acceptable to the board or a cash deposit
19 pursuant to this section if the program or institution is accredited.

20 C. The LETTER OF CREDIT, surety bond or deposit required by this
21 section shall not be less than fifteen thousand dollars. The board may
22 require A LETTER OF CREDIT, a bond or a deposit required by this section in
23 an amount of more than fifteen thousand dollars and may consider the
24 following:

25 1. The applicant's gross tuition revenue.

26 2. The length of time the applicant ~~is~~ HAS BEEN in operation and the
27 applicant's financial position.

28 D. Surety bonds shall be executed by the applicant as principal with a
29 corporation authorized to transact surety business in this state. Evidence
30 of a surety bond shall be submitted to the board in a form prescribed by the
31 board. SURETY BONDS ISSUED BY A SURETY COMPANY MUST BE RATED "A" OR BETTER
32 BY MOODY'S INVESTOR SERVICE OR STANDARD AND POOR'S RATING SERVICE OR THEIR
33 SUCCESSORS.

34 E. AS AN ALTERNATIVE TO A SURETY BOND, THE APPLICANT MAY SUBMIT A
35 CONFIRMED, IRREVOCABLE LETTER OF CREDIT ACCEPTABLE AND PAYABLE TO THE BOARD.

36 ~~E.~~ F. As an alternative to a surety bond, an applicant may establish
37 a cash deposit in the amount of the bond with the state treasurer pursuant to
38 rules adopted by the board. The treasurer shall deposit the monies in a
39 special account to be known as the private postsecondary education cash bond
40 fund. The monies shall be invested by the treasurer pursuant to laws
41 governing such deposits. The accrued interest from investments shall be held
42 by the treasurer for the payment of current claims. Cash deposits plus
43 accrued interest may be withdrawn, if there are no outstanding claims against
44 them, one year after the termination of the license in connection with which

1 the monies are deposited. The deposit may be withdrawn one year after the
2 filing of a surety bond as a replacement to the cash deposit.

3 ~~F.~~ G. The LETTERS OF CREDIT, bonds or cash ~~deposit~~ DEPOSITS required
4 by this section shall be in favor of this state for the benefit of any person
5 covered by this section. The LETTER OF CREDIT, bond or deposit is subject to
6 claims by the board for failure to pay any amount required pursuant to this
7 chapter or by any person who is damaged by the failure of the principal to
8 provide educational services pursuant to its published catalogs, brochures or
9 other publications.

10 ~~G.~~ H. A person claiming against the LETTER OF CREDIT, bond or cash
11 deposit may maintain an action against the principal and the surety or
12 depository. The principal's LETTER OF CREDIT, surety bond or deposit may be
13 sued upon in successive actions until the full amount is exhausted. A suit
14 shall not be commenced on the LETTER OF CREDIT, bond or cash deposit after
15 the expiration of one year following the commission or omission of the act on
16 which the suit is based, except that time for purposes of claims for fraud
17 shall be measured pursuant to section 12-543.

18 ~~H.~~ I. The LETTER OF CREDIT, bond or deposit shall be continuous in
19 form and shall be conditioned that the total aggregate liability of the
20 LETTER OF CREDIT, surety or depository for all claims shall be limited to the
21 face amount of the LETTER OF CREDIT, bond OR DEPOSIT irrespective of the
22 number of years the LETTER OF CREDIT, bond or deposit is in force. If a
23 corporate surety desires to make payment without waiting for court action,
24 the amount of any bond filed pursuant to this chapter shall be reduced to the
25 extent of any good faith payments made by the corporate surety. These
26 payments shall be based on priority of written claims received by the
27 corporate surety before court action.

28 ~~I.~~ J. On receipt by the board of notice of intent to cancel a bond by
29 a corporate surety, the board shall immediately notify the principal on the
30 bond of the effective date of cancellation and that the principal must
31 furnish a like bond OR A LETTER OF CREDIT or make a cash deposit before the
32 cancellation date or within thirty days after mailing of the notice by the
33 board or its license shall be suspended. Notice to the principal shall be by
34 certified mail in a sealed envelope with postage prepaid addressed to the
35 principal's latest address of record in the board's office. A license is
36 automatically suspended on the date the bond is cancelled unless a
37 replacement bond OR A LETTER OF CREDIT or cash deposit in lieu of a bond is
38 on file with the board. Operation while the license is suspended is a
39 violation of this chapter. The license shall not be reinstated until a
40 replacement bond, LETTER OF CREDIT or cash deposit is on file with the board.

41 Sec. 7. Section 32-3051, Arizona Revised Statutes, is amended to read:

42 32-3051. Grounds for disciplinary action

43 The board may take disciplinary action against any person licensed
44 pursuant to this chapter for any one or a combination of the following
45 reasons:

1 1. Violation of this chapter or rules adopted pursuant to this
2 chapter.

3 2. Conviction of a felony or any crime related to the operation of an
4 educational institution.

5 3. Engaging in fraudulent advertising.

6 4. Failure to reapply as prescribed by the board for a license issued
7 under this chapter if the licensee is continuing in business.

8 5. Engaging in false or misleading advertising, solicitation or
9 recruitment practices.

10 6. UNPROFESSIONAL OR DISHONORABLE CONDUCT BY THE LICENSEE OR ANY
11 EMPLOYEE, ADMINISTRATOR, OWNER, MEMBER, OFFICER, DIRECTOR OR AGENT OF THE
12 LICENSEE, WHETHER OCCURRING IN THIS STATE OR ELSEWHERE, INCLUDING:

13 (a) ENGAGING IN SEXUAL CONDUCT WITH A STUDENT WHO IS NOT THE PERSON'S
14 SPOUSE AT THE TIME OF THE CONDUCT. FOR THE PURPOSES OF THIS SUBDIVISION,
15 "SEXUAL CONDUCT" MEANS EITHER OF THE FOLLOWING:

16 (i) ENGAGING IN OR SOLICITING A SEXUAL RELATIONSHIP, WHETHER
17 CONSENSUAL OR NONCONSENSUAL.

18 (ii) MAKING SEXUAL ADVANCES, REQUESTING SEXUAL FAVORS OR ENGAGING IN
19 ANY OTHER VERBAL OR PHYSICAL CONTACT OF A SEXUAL NATURE.

20 (b) VERBALLY ABUSING A STUDENT OR EMPLOYEE.

21 (c) THREATENING OR INTIMIDATING BY WORD OR CONDUCT CAUSING PHYSICAL
22 INJURY TO A STUDENT.

23 (d) INTENTIONALLY, KNOWINGLY OR RECKLESSLY CAUSING ANY PHYSICAL INJURY
24 TO A STUDENT.

25 (e) KNOWINGLY TOUCHING A STUDENT WITH THE INTENT TO INJURE, INSULT OR
26 PROVOKE THE STUDENT.

27 7. FAILURE TO COMPLY WITH ALL STATE AND FEDERAL LAWS RELATING TO THE
28 OPERATION OF A PRIVATE POSTSECONDARY EDUCATIONAL INSTITUTION.

29 8. FAILURE TO COMPLY WITH APPLICABLE STANDARDS OF ACCREDITATION AS
30 DETERMINED BY THE BOARD.

31 9. FAILURE TO BE FINANCIALLY RESPONSIBLE AS DETERMINED BY THE BOARD.

32 10. FAILURE TO HAVE ADEQUATE MANAGEMENT CAPABILITY AS DETERMINED BY THE
33 BOARD.

34 11. FAILURE TO PROVIDE THE APPROVED PROGRAM AS DETERMINED BY THE BOARD.

35 12. FAILURE TO PROVIDE FACULTY WHO MEET THE MINIMUM QUALIFICATIONS AS
36 DETERMINED BY THE BOARD.

37 13. FAILURE TO PROVIDE THE FACILITY, EQUIPMENT AND OTHER RESOURCES TO
38 OPERATE THE PROGRAM.

39 14. FAILURE TO FOLLOW PUBLISHED ADMINISTRATIVE POLICIES, PROCEDURES AND
40 FEES OF THE EDUCATIONAL INSTITUTION.

41 15. FAILURE TO OFFER PUBLISHED STUDENT SERVICES.

42 16. FAILURE TO MAINTAIN RECORDS AS PRESCRIBED BY RULE.

43 17. FAILURE TO PROVIDE A SAFE LEARNING ENVIRONMENT.

44 18. FAILURE TO COMPLY WITH A BOARD ORDER, CONSENT AGREEMENT,
45 STIPULATION, SUBPOENA OR INVESTIGATIVE REQUEST.

1 Sec. 8. Section 32-3052, Arizona Revised Statutes, is amended to read:

2 32-3052. Types of disciplinary action; definition

3 A. On its own motion the board may investigate any evidence indicating
4 that any person may be guilty of violating this chapter or rules adopted
5 pursuant to this chapter. Any person may report to the board any information
6 which shows that a person licensed pursuant to this chapter constitutes a
7 threat to the public health, safety and welfare. On a showing of a threat to
8 the public health, safety and welfare, the board, before conducting a hearing
9 pursuant to title 41, chapter 6, article 10, may impose probation
10 requirements best adapted to protect the public health, safety and welfare.

11 B. On the filing of a sworn complaint with the board charging any
12 person with any reasons for disciplinary action specified in section 32-3051,
13 the board shall conduct an investigation of the complaint. The board may
14 employ investigators to conduct the investigation. Evidence may be taken by
15 deposition or affidavit.

16 C. A person who reports or provides information to the board in good
17 faith is not subject to an action for civil damages as a result of reporting
18 or providing the information. The name of the person who reported or
19 provided information shall not be disclosed unless disclosure is necessary to
20 the proceedings conducted under this section.

21 ~~D. The board, after an investigation and a hearing conducted pursuant~~
22 ~~to title 41, chapter 6, article 10, may take any one or a combination of the~~
23 ~~following disciplinary actions against any person licensed pursuant to this~~
24 ~~chapter:~~

25 ~~1. Revoke a license.~~

26 ~~2. Suspend a license.~~

27 ~~3. Impose a civil penalty in an amount of not to exceed one thousand~~
28 ~~dollars for each violation of this chapter or rules adopted pursuant to this~~
29 ~~chapter. The board may impose an additional penalty in an amount not to~~
30 ~~exceed one thousand dollars for each day the civil penalty is not paid,~~
31 ~~beginning on the day after the penalty has been imposed.~~

32 ~~4. Impose probation requirements best adapted to protect public~~
33 ~~health, safety and welfare including a requirement for restitution payments~~
34 ~~to students or other persons suffering economic loss resulting from violation~~
35 ~~of this chapter or rules adopted pursuant to this chapter.~~

36 ~~5. Issue a written reprimand.~~

37 ~~E. All monies derived from the imposition of civil penalties shall be~~
38 ~~deposited in the state general fund.~~

39 D. THE CHAIRMAN OF THE BOARD SHALL APPOINT A COMPLAINT COMMITTEE
40 CONSISTING OF AT LEAST THREE MEMBERS OF THE BOARD. THE COMPLAINT COMMITTEE
41 IS SUBJECT TO OPEN MEETING REQUIREMENTS PURSUANT TO TITLE 38, CHAPTER 3,
42 ARTICLE 3.1.

1 E. AFTER THE BOARD STAFF INVESTIGATES A COMPLAINT, THE COMPLAINT
2 COMMITTEE SHALL REVIEW THE COMPLAINT. BASED ON INFORMATION PROVIDED PURSUANT
3 TO SUBSECTION A OR B OF THIS SECTION, THE COMPLAINT COMMITTEE MAY DO ANY OF
4 THE FOLLOWING:

- 5 1. DISMISS THE COMPLAINT IF THE COMMITTEE DETERMINES THE COMPLAINT IS
6 WITHOUT MERIT.
- 7 2. FILE A LETTER OF CONCERN.
- 8 3. REFER THE COMPLAINT TO THE FULL BOARD FOR FURTHER REVIEW AND
9 ACTION.

10 F. BASED ON INFORMATION PROVIDED PURSUANT TO SUBSECTION A OR B OF THIS
11 SECTION, IF THE BOARD FINDS THAT THE COMPLAINT LACKS SUFFICIENT SERIOUSNESS
12 TO MERIT DIRECT ACTION AGAINST THE LICENSEE, THE BOARD MAY TAKE ANY OF THE
13 FOLLOWING ACTIONS:

- 14 1. DISMISS THE COMPLAINT IF THE BOARD BELIEVES THE INFORMATION IS
15 WITHOUT MERIT.
- 16 2. FILE A LETTER OF CONCERN.
- 17 3. ENTER INTO AN AGREEMENT WITH THE LICENSEE TO RESTRICT OR LIMIT THE
18 LICENSEE'S ACTIVITIES.
- 19 4. REQUIRE RESTITUTION TO A STUDENT.
- 20 5. IMPOSE A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED ONE THOUSAND
21 DOLLARS FOR EACH VIOLATION OF THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS
22 CHAPTER. THE BOARD MAY IMPOSE AN ADDITIONAL PENALTY IN AN AMOUNT NOT TO
23 EXCEED ONE THOUSAND DOLLARS FOR EACH DAY THE CIVIL PENALTY IS NOT PAID,
24 BEGINNING ON THE DAY AFTER THE PENALTY HAS BEEN IMPOSED.

25 G. BASED ON INFORMATION PROVIDED PURSUANT TO SUBSECTION A OR B OF THIS
26 SECTION, IF THE BOARD FINDS THE COMPLAINT HAS OR MAY HAVE SUFFICIENT
27 SERIOUSNESS TO MERIT DIRECT ACTION AGAINST THE LICENSEE, THE BOARD MAY
28 REQUEST AN INFORMAL INTERVIEW WITH THE LICENSEE.

29 H. THE BOARD SHALL ISSUE A COMPLAINT AND HOLD A HEARING PURSUANT TO
30 TITLE 41, CHAPTER 6, ARTICLE 10 IF EITHER:

- 31 1. THE LICENSEE REFUSES TO BE INTERVIEWED.
- 32 2. PURSUANT TO AN INTERVIEW, THE BOARD DETERMINES THAT CAUSE MAY EXIST
33 TO REVOKE OR SUSPEND THE LICENSE.

34 I. BASED ON THE RESULT OF THE INFORMAL INTERVIEW OR HEARING, IF THE
35 BOARD DETERMINES THAT THE FACTS DO NOT WARRANT REVOCATION OR SUSPENSION OF
36 THE LICENSE, IT MAY TAKE ANY OF THE FOLLOWING ACTIONS:

- 37 1. DISMISS THE COMPLAINT IF THE BOARD FINDS THE INFORMATION IS WITHOUT
38 MERIT.
- 39 2. FILE A LETTER OF CONCERN.
- 40 3. ISSUE A DECREE OF CENSURE.
- 41 4. FIX A PERIOD AND TERMS FOR PROBATION TO PROTECT THE PUBLIC HEALTH,
42 SAFETY AND WELFARE. THE PROBATION MAY INCLUDE A RESTRICTION ON THE LICENSE.
43 IF A LICENSEE FAILS TO COMPLY WITH THE TERMS OF PROBATION, THE BOARD MAY FILE
44 A COMPLAINT AND NOTICE OF HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10
45 AND TAKE FURTHER DISCIPLINARY ACTION.

1 5. ENTER INTO AN AGREEMENT WITH THE LICENSEE TO RESTRICT OR LIMIT THE
2 LICENSEE'S ACTIVITIES.

3 6. REQUIRE RESTITUTION TO THE STUDENT.

4 7. IMPOSE A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED ONE THOUSAND
5 DOLLARS FOR EACH VIOLATION OF THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS
6 CHAPTER. THE BOARD MAY IMPOSE AN ADDITIONAL PENALTY IN AN AMOUNT NOT TO
7 EXCEED ONE THOUSAND DOLLARS FOR EACH DAY THE CIVIL PENALTY IS NOT PAID,
8 BEGINNING ON THE DAY AFTER THE PENALTY HAS BEEN IMPOSED.

9 J. IF THE BOARD FINDS THAT THE INFORMATION PROVIDED PURSUANT TO
10 SUBSECTION A OR B OF THIS SECTION WARRANTS SUSPENSION OR REVOCATION OF A
11 LICENSE, THE BOARD SHALL HOLD A HEARING PURSUANT TO TITLE 41, CHAPTER 6,
12 ARTICLE 10. NOTICE OF A COMPLAINT AND HEARING IS FULLY EFFECTIVE BY MAILING
13 A TRUE COPY OF THE NOTICE OF COMPLAINT AND HEARING ADDRESSED TO THE
14 LICENSEE'S LAST KNOWN ADDRESS OF RECORD IN THE BOARD'S FILES. NOTICE IS
15 COMPLETE AT THE TIME OF ITS DEPOSIT IN THE MAIL.

16 K. EXCEPT AS PROVIDED IN SECTION 41-1092.08, SUBSECTION H, A PERSON
17 MAY APPEAL A FINAL DECISION MADE PURSUANT TO THIS SECTION TO THE SUPERIOR
18 COURT PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

19 L. IF THE BOARD DETERMINES AFTER A HEARING THAT THE LICENSEE HAS
20 VIOLATED THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER, THE BOARD
21 MAY TAKE ANY OF THE FOLLOWING ACTIONS:

22 1. SUSPEND OR REVOKE THE LICENSE.

23 2. ISSUE AN ORDER OF CENSURE. FOR THE PURPOSES OF THIS PARAGRAPH, AN
24 ORDER OF CENSURE IS AN OFFICIAL ACTION AGAINST THE LICENSEE AND MAY INCLUDE A
25 REQUIREMENT FOR RESTITUTION TO A STUDENT.

26 3. PLACE THE LICENSEE ON PROBATION.

27 4. IMPOSE A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED ONE THOUSAND
28 DOLLARS FOR EACH VIOLATION OF THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS
29 CHAPTER. THE BOARD MAY IMPOSE AN ADDITIONAL PENALTY IN AN AMOUNT NOT TO
30 EXCEED ONE THOUSAND DOLLARS FOR EACH DAY THE CIVIL PENALTY IS NOT PAID,
31 BEGINNING ON THE DAY AFTER THE PENALTY HAS BEEN IMPOSED.

32 M. ON ITS DETERMINATION THAT ANY PERSON HAS VIOLATED THIS CHAPTER OR
33 RULES ADOPTED PURSUANT TO THIS CHAPTER, THE BOARD MAY ASSESS THE PERSON WITH
34 THE BOARD'S REASONABLE COSTS AND EXPENSES, INCLUDING ATTORNEY FEES, INCURRED
35 IN CONDUCTING THE INVESTIGATION, INFORMAL INTERVIEWS, COMMITTEE MEETINGS,
36 BOARD MEETINGS OR ADMINISTRATIVE HEARINGS. ALL MONIES COLLECTED PURSUANT TO
37 THIS SUBSECTION SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147,
38 IN THE BOARD FOR PRIVATE POSTSECONDARY EDUCATION FUND ESTABLISHED BY SECTION
39 32-3004.

40 N. ALL MONIES DERIVED FROM THE IMPOSITION OF CIVIL PENALTIES PURSUANT
41 TO THIS SECTION SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147,
42 IN THE STATE GENERAL FUND.

43 O. FOR THE PURPOSES OF THIS SECTION, "LETTER OF CONCERN" MEANS AN
44 ADVISORY LETTER THAT NOTIFIES THE LICENSEE THAT WHILE THERE IS INSUFFICIENT
45 EVIDENCE TO SUPPORT DISCIPLINARY ACTION, THE BOARD BELIEVES THE LICENSEE

1 SHOULD MODIFY OR ELIMINATE CERTAIN ACTIVITIES OR PRACTICES AND THAT
2 CONTINUATION OF THE ACTIVITIES OR PRACTICES MAY RESULT IN DISCIPLINARY ACTION
3 AGAINST THE LICENSEE.

4 Sec. 9. Section 32-3071, Arizona Revised Statutes, is amended to read:
5 32-3071. Definitions

6 In this article, unless the context otherwise requires:

7 1. "Assessment" means the amount a private postsecondary education
8 institution is required to pay to the student tuition recovery fund.

9 2. "Ceasing operations" means a private postsecondary education
10 institution that has stopped offering educational courses or programs to the
11 public for any reason.

12 ~~3. "Cosmetology school" means a school as defined in section 32-501~~
13 ~~that is licensed pursuant to chapter 5 of this title.~~

14 4. 3. "Distance learning instruction" means a written correspondence
15 or electronic medium education program for students enrolled in an
16 institution licensed under this chapter.

17 ~~5.~~ 4. "Fund" means the student tuition recovery fund.

18 ~~6.~~ 5. "Newly enrolled student" means a student enrolling with a
19 private postsecondary education institution for the first time or reenrolling
20 after an absence from the institution for one or more years.

21 ~~7.~~ 6. "Person injured" means a student of a private postsecondary
22 education institution, ~~cosmetology school or professional driver training~~
23 ~~school~~ which is not exempt from this article pursuant to section 32-3072,
24 subsection D and which charges prepaid tuition to a student who is damaged
25 monetarily by the institution, ~~cosmetology school or professional driver~~
26 ~~training school~~ ceasing operations before fulfilling its contractual
27 obligations or fully providing the services which were paid for in
28 advance. Person injured does not include a nonresident student who is
29 eligible to claim for recovery under a student tuition recovery fund or
30 similar fund in the student's state of residence.

31 ~~8.~~ 7. "Prepaid tuition" means monies advanced to an educational
32 institution, ~~cosmetology school or professional driver training school~~ before
33 the educational institution, ~~cosmetology school or professional driver~~
34 ~~training school~~ provides its service.

35 9. 8. "Private postsecondary education institution" or "institution"
36 means an educational institution subject to licensure under this chapter.

37 ~~10.~~ "Professional driver training school" means a school as defined in
38 section 32-2351 that is licensed pursuant to chapter 23 of this title and
39 that elects to participate in the student tuition recovery fund.

40 ~~11.~~ 9. "Regional accrediting agency" means an agency which is
41 recognized by the United States department of education and which accredits
42 degree granting institutions operating in a designated geographic region.

1 ~~12-~~ 10. "Specialized accrediting agency" means an agency which is
2 recognized by the United States department of education and which accredits
3 individual programs offered by institutions and not the institutions
4 themselves.

5 ~~13-~~ 11. "Total course cost" means the tuition and other fees charged
6 by the private postsecondary education institution for each course offered.

7 Sec. 10. Section 32-3072, Arizona Revised Statutes, is amended to
8 read:

9 32-3072. Student tuition recovery fund

10 A. The student tuition recovery fund is established and shall be
11 administered by the board. A person injured by a private postsecondary
12 education institution, ~~cosmetology school or professional driver training~~
13 ~~school~~ ceasing operations may recover from the fund an amount not to exceed
14 the actual damages sustained.

15 B. Except as provided in subsection D of this section, each private
16 postsecondary education institution, ~~cosmetology school or professional~~
17 ~~driver training school as defined in section 32-3071~~ which collects prepaid
18 tuition shall annually pay an assessment to the board for each newly enrolled
19 student in an amount equal to the sum of two-tenths of one per cent of the
20 total course cost for each newly enrolled student. A private postsecondary
21 institution, ~~cosmetology school or professional driver training school~~ shall
22 not be required to pay assessments for newly enrolled students who are not
23 residents of this state for whom the institution, ~~cosmetology school or~~
24 ~~professional driver training school~~ has paid a student tuition recovery fund
25 assessment or an assessment to a similar fund in the student's state of
26 residence. A private postsecondary institution, ~~cosmetology school or~~
27 ~~professional driver training school~~ shall not be required to pay assessments
28 for students who are not residents of this state and who are enrolled in
29 distance learning instruction.

30 C. The total assessment for each newly enrolled student shall not be
31 more than ten dollars. If on June 30 of any year the balance in the fund
32 exceeds five hundred thousand dollars, and on notice by the board to
33 institutions, ~~cosmetology schools and professional driver training schools,~~
34 only institutions and schools that are newly or provisionally licensed during
35 or after that fiscal year then ended shall pay the assessment.

36 D. Institutions accredited by a regional or specialized accrediting
37 agency recognized by the United States department of education are exempt
38 from this section.

39 ~~E. If a cosmetology school or professional driver training school~~
40 ~~fails to pay an assessment levied pursuant to this section, the board shall~~
41 ~~notify the appropriate licensing agency. The appropriate licensing agency~~
42 ~~shall suspend the license of the cosmetology school or professional driver~~
43 ~~training school pursuant to section 32-572, subsection C or 32-2371,~~
44 ~~subsection C until the school pays the assessment in full.~~

1 Sec. 11. Section 32-3076, Arizona Revised Statutes, is amended to
2 read:

3 32-3076. Subrogation

4 The state has the right of subrogation to the extent of payments made
5 from the fund including the right to collect from a LETTER OF CREDIT, bond or
6 cash deposit made pursuant to section 32-3023 or directly from the
7 institution. The board and the attorney general shall promptly enforce all
8 subrogation claims.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

Passed the House April 18, 2005,

by the following vote: 44 Ayes,

13 Nays, 3 Not Voting


Passed the Senate March 7, 2005,

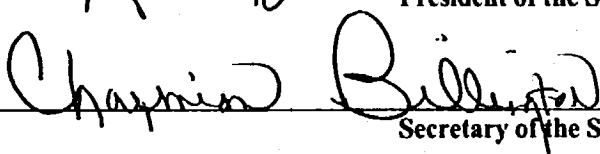
by the following vote: 24 Ayes,

5 Nays, 1 Not Voting


Speaker of the House
Pro Tempore


Chief Clerk of the House


President of the Senate


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2005

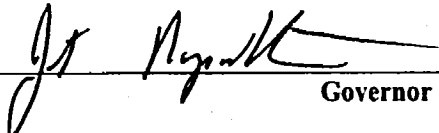
at 12:05 o'clock P. M.


Secretary to the Governor

Approved this 25 day of

April, 2005,

at 9⁵⁰ o'clock A. M.


Governor of Arizona

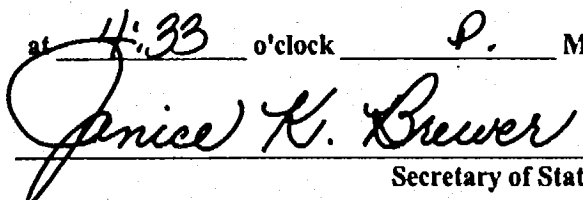
S.B. 1348

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2005

at 4:33 o'clock P. M.


Secretary of State